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COMMITTEE ON THE RIGHTS OF THE CHILD

Second session

SUMMARY RECORD OF THE 41st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 6 October 1992, at 3 p.m.

Chairman: Mrs. BADRAN

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* No summary record was prepared for the 40th meeting.

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The meeting was called to order at 3.15 p.m.

PREPARATORY ACTIVITIES RELATING TO THE WORLD CONFERENCE ON HUMAN RIGHTS (agenda item 5)

1. The CHAIRMAN, reporting on the second and third sessions of the Preparatory Committee for the World Conference on Human Rights, which she had attended, said that the agendas for the two sessions had been similar in content.

2. It had been agreed that the World Conference would be held in Vienna for two weeks in June 1993. The dates and venues had also been decided for the three proposed regional meetings, although the dates for the meeting in the Asian region still had to be finalized. Agreement had also been reached on the objectives of the regional meetings and the respective agendas. An information programme had been discussed and approved. Its aim was to enhance public awareness of major human rights issues and it would be targeted at the media, parliaments, intergovernmental and non-governmental organizations, research institutes and secondary schools. The Secretary-General of the Conference had also reported on the status of studies and documentation for the World Conference.

3. As to the participation of the least developed countries in preparatory meetings and in the World Conference itself, it had been decided that a daily subsistence allowance would be provided out of the voluntary fund for one representative from each country. A call had again been made for contributions to the fund in order to meet the additional costs and appreciation had been expressed to those States which had already contributed. Furthermore, the United Nations human rights treaty bodies had submitted a document at the second session, which included the recommendations drafted by the Committee on the Rights of the Child at its first session.

4. At the second session, the Preparatory Committee had provisionally approved the rules of procedure with reservations on two points: the number of vice-presidents and the participation of non-governmental organizations. At the third session, it had been decided there should be 29 vice-presidents, but agreement had not been reached on the participation of non-governmental organizations.

5. The most controversial issue at both the second and third sessions had concerned one of the items on the provisional agenda for the World Conference. A number of countries had requested that self-determination, the elimination of foreign occupation, all forms of racial discrimination and apartheid should be included under the agenda item in question. That proposal had met with the general approval of the Latin American and African countries, whereas the United States of America, together with the Western and Nordic countries had preferred a general reference to human rights.

6. Another bone of contention had been the relationship between development, democracy and the enjoyment of human rights. China, the Syrian Arab Republic and other countries had said that development should be a basic human right.

The Latin American and African countries had stressed the reciprocal relationship of the three elements. The United States of America had objected to the reference to development as a basic human right. The Preparatory Committee's failure to take a decision on the agenda meant that the matter would either have to be referred to the General Assembly or taken up again at the fourth session. Unfortunately, the dates for that session had not yet been finalized.

7. Like the other chairpersons of the other human rights treaty bodies, she had submitted a statement at the second session of the Preparatory Committee; it was circulated at the present meeting for the information of participants. Regrettably, the Preparatory Committee had spent a good deal of time in drafting groups discussing the provisional agenda, which of course the chairpersons of the treaty bodies had been unable to attend. One of the tasks for the forthcoming meeting of those chairpersons would be to draft recommendations for the attention of the Preparatory Committee on how the treaty bodies could play a more effective role in the World Conference. She would welcome members' views and comments on the subject.

8. Mr. KOLOSOV recalled that, at its first session, the Committee had discussed the possible inclusion of a special item on children's rights in the agenda for the World Conference. He wondered whether the matter had been raised at all in the Preparatory Committee. Furthermore, had there been an opportunity to discuss the participation of members of treaty bodies in the World Conference?

9. Mr. HAMMARBERG said that the possibility of postponing the World Conference on Human Rights might have to be contemplated. If there was no longer consensus on what constituted human rights, the Conference would be unable to achieve its aims and might even undermine the progress that had been made so far. If, on the other hand, the Conference was held, the Committee's main concern would be to ensure that the question of children's rights was finally recognized in all its importance and that it found its rightful place on the agenda. It was also to be hoped that the Conference would provide greater overall support for the treaty bodies in order to enable them to fulfil the tasks assigned to them. It was generally held that, of all the entities in the human rights system, treaty bodies were the most likely to be successful in improving the human rights situation. It would be regrettable if their progress was halted due to failure to agree on less important issues.

10. Mr. MOMBESHORA stressed the importance of the dissemination of information on human rights. In many countries, awareness of human rights was created as a result of situations of gross violations of those rights. In his view, it was a matter which should be addressed by a world conference in order to avert such situations. As to the Preparatory Committee's inability to agree on the provisional agenda, it was important not to lose sight of the Conference's main objectives, namely to secure greater respect for human rights. It was highly regrettable that time and effort had been wasted on matters of secondary importance.

11. Mrs. SANTOS PAIS said that the active participation of treaty bodies and non-governmental organizations in the World Conference would be desirable. As bodies which represented the views of individual experts and civilian society respectively, they could make a valuable contribution to the work of the Conference. One of the Conference's goals was to assess what headway had been made with regard to existing standards. The fact that an unprecedented number of States had acceded to the Convention testified to its usefulness as a human rights instrument and proved that the political will did exist to implement its provisions. The Committee had also investigated ways of improving the effectiveness of the implementation of such standards. For those reasons, the Committee had an important role to play in the World Conference and she hoped that the Convention would be given serious consideration in that forum. However, it was to be feared that, on account of the increasingly politicized nature of preparations for the World Conference, treaty bodies such as the Committee would miss the opportunity to make a valuable contribution.

12. The CHAIRMAN endorsed the remarks by Mrs. Santos Pais about the highly politicized nature of the proceedings at the preparatory meetings. The representatives of the United Nations and treaty bodies attending the meetings had felt that they had had no effective role to play. Following the second session, the Chairpersons of the various treaty bodies had agreed to set up a working group which would discuss the issues from the standpoint of the treaty bodies and would draft recommendations on how such bodies could contribute more usefully to the World Conference.

13. The importance of children's rights had been raised by several speakers in the Preparatory Committee. For the time being, however, they had not been included in the provisional agenda. The matter would be taken up again at the forthcoming meeting of the chairpersons of treaty bodies. As to the participation in the World Conference of other Committee members, according to the Conference's rules of procedure other designated members of human rights bodies would be allowed to attend. Clearly, the financial implications of another member, participating over and above the Chairman, would have to be examined.

14. Mrs. SANTOS PAIS said she welcomed the possible creation of a working group by the meeting of Chairpersons of the treaty bodies in order to ensure that the latter made a more useful contribution to the World Conference. As for the attendance of members of treaty bodies at the World Conference, other treaty bodies had followed the Committee's example and issued recommendations to the effect that all members of such bodies should be allowed to participate. Furthermore, she pointed out that, although children's rights had not been included in the agenda for the Conference, they would be dealt with in a number of studies being prepared for the Conference.

15. In reply to a question from Mr. KOLOSOV, Mr. HOUSHMAND (Representative of the Secretary-General) said that such a conference like the World Conference on Human Rights would normally appoint two or three working committees to discuss specific issues on the agenda, but as far as he knew the modalities of their

establishment had not so far been settled. The Third Committee of the General Assembly, in taking up the reports of the Preparatory Committee, would clarify certain areas, including the final agenda of the Conference.

16. Mr. PACE (Coordinator of the World Conference on Human Rights, said that at its third session the Preparatory Committee for the World Conference had taken a number of decisions that might be relevant to the Committee. The World Conference was to take place in Vienna from 14 to 25 June 1993 and the Preparatory Committee still had to hold a final meeting from 20 March to 2 April 1993. The reports of its second and third sessions were shortly to be discussed by the Third Committee of the General Assembly, which would probably take the necessary decisions by the middle of November.

17. One issue outstanding was the draft provisional agenda for the Conference. The Third Committee would have to decide whether it wished the Preparatory Committee to make another attempt to determine the agenda or whether it would take up the issue itself.

18. At the third session, the Preparatory Committee had established the rules of procedure for the Conference, and the parameters for participation were now clear. In addition to States, including Members of the United Nations, national institutions working on human rights were to be invited. That was an innovative step and the Conference secretariat was preparing a definition of such institutions. Another difficult problem was participation by non-governmental organizations. At its second session, the Preparatory Committee had agreed to admit non-governmental organizations in consultative status with the Economic and Social Council, but could not agree on the parameters for participation of non-governmental organizations at regional meetings. Three such meetings were scheduled: in Tunis for the African region, from 2 to 6 November 1992; in San José, Costa Rica, for the Latin American and Caribbean region, from 30 November to 4 December 1992; and in Bangkok for the Asian region, early in 1993. The Preparatory Committee's recommendation to the Assembly on NGO participation in regional meetings for the World Conference was that invitations should be extended to non-governmental organizations in consultative status with the Economic and Social Council which were active in the field of human rights and/or development as well as in the region concerned; and to other non-governmental organizations active in the field of human rights and/or development and with headquarters in the region concerned, in prior consultation with the countries of the region. Those two categories of organization attending regional meetings would, in turn, be admitted to the World Conference. The Conference secretariat was now sending out the invitations to the first category of non-governmental organizations for the Latin American and African meetings and would start preparing the parameters for their participation.

19. A number of studies had been prepared for the World Conference and would be submitted to the Preparatory Committee at its fourth session. The studies were of two types: prototype studies, namely those prepared in the name of the Secretary-General of the Conference, based on inputs received from various experts, and contributions from other sources considered to have expertise in the field of human rights particularly relevant to the objectives of the Conference. It was the secretariat's understanding that the recommendations

made to the Preparatory Committee by representatives of human rights bodies including treaty-based bodies would be welcome. The outlines of such studies were to be found in document A/CONF.157/PC/20.

20. Mgr. BAMBAREN GASTELUMENDI said that it was very important for the rights of the child to be included in the agenda for the World Conference on Human Rights. Otherwise, in view of the politicization of human rights issues, they might occupy only a subsidiary place at the Conference.

OTHER MATTERS (agenda item 14) (continued)

Reservations to the Convention

21. Mrs. SANTOS PAIS (Rapporteur) recalled that, at its first session, the Committee had recognized the importance of the question of reservations to the Convention and had requested the secretariat to provide a list of such reservations and of objections made to them. The Commission on Human Rights had stressed the importance of ensuring strict compliance by States parties with their obligations under the Convention and had appealed to States that had made reservations to examine the compatibility of the reservations with article 1 of the Convention and other relevant rules of international law. The Commission had also requested the forthcoming meeting of chairpersons of treaty monitoring bodies to include the matter on its agenda.

22. Other treaty bodies, including the Committee on the Elimination of Discrimination against Women (CEDAW), had discussed the matter and CEDAW had invited States parties to the Convention on the Elimination of All Forms of Discrimination against Women to raise the question of the validity and legal effect of reservations in the context of preparations for the World Conference on Human Rights. CEDAW had observed that reservations to the Convention on the Elimination of All Forms of Discrimination against Women were so generally worded that it was difficult to determine what was being reserved and what the effect of the reservations would be on the obligations assumed by the States entering reservations. The Working Group on Contemporary Forms of Slavery, established by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, had also considered the question of reservations to the Convention on the Elimination of All Forms of Discrimination against Women, and the Sub-Commission had decided to seek the views of CEDAW and the Commission on the Status of Women about the desirability of asking the International Court of Justice for an advisory opinion on the validity and legal effect of reservations. The Sub-Commission would consider the matter at its next session.

23. Not all human rights instruments referred to the admissibility of reservations, but article 51, paragraph 2, of the Convention on the Rights of the Child stated that: "A reservation incompatible with the object and purpose of the present Convention shall not be permitted". The wording might lead to different approaches to that provision. A system existed under which States parties could object to reservations, as indeed some had done. Thought should be given to whether a reservation incompatible with the object and purpose of the Convention was invalid at source or whether it became valid because no

objection was made to it. Another question was whether the Committee should follow the CEDAW precedent and ask for an advisory opinion from the International Court of Justice.

24. What attitude should the Committee take in examining the reports of States parties which had entered reservations to the Convention? There need be no concern about reservations intended to strengthen the Convention. In the case of others that were too general, however, the Committee might request detailed information from States parties to find out whether the provisions of the Convention had been taken into account. Article 27 of the Vienna Convention on the Law of Treaties provided that a party might not invoke the provisions of its internal law as justification for its failure to perform a treaty. The Committee might encourage States parties to see whether the need for a reservation still remained and urge them to consider withdrawing reservations, particularly vague reservations that did not allow the Committee to assess what was actually at issue. It might also make suggestions about the redrafting of legislation deemed to be incompatible with the Convention, for which purpose technical assistance might be provided. The international community had an obligation to enhance the protection of human dignity. She therefore believed that a reservation incompatible with the object and purpose of the Convention was invalid from the start and that the question of objections to it was irrelevant.

25. Mr. KOLOSOV said that the points raised by Mrs. Santos Pais were both important and complex. From his reading of the Vienna Convention he inferred that reservations and objections to them normally became part of a contract among States parties to a treaty. There were several models for the interpretation of international treaties and, in a broader sense, of international contracts, including reservations and objections. Only parties to a treaty had the right to make an official interpretation. Any interpretation by the Committee of reservations and objections as undermining the goals of the Convention would be a doctrinal, and not an official, interpretation. While doctrinal interpretation by scholars was often significant, it had to be approached with caution. If an entire committee of experts made an interpretation that was unacceptable to a Government, it might be entering on a collision course with that Government. He was therefore reluctant to agree that the Committee should follow CEDAW's example and request an advisory opinion from the International Court of Justice. In any case, was a treaty monitoring body competent to address such a request to the ICJ direct? The Committee might raise the question of reservations in the course of its consideration of States parties' reports, but he was not sure in what form or for what purpose, since any reservation was already part of the contract to which he had referred.

26. As to the content of the rights and duties a Government was prepared to assume, he feared that that was a matter beyond the Committee's competence. If the Committee considered that reservations or objections were undermining the purpose of the Convention, it must proceed with great caution.

27. Miss MASON said that she agreed with Mr. Kolosov and partly with Mrs. Santos Pais. Most reservations seemed to be related to religion. The Convention contained provisions concerning freedom of religion, family

reunification and adoption. When the Committee considered reservations it should perhaps not ask too many questions, especially with regard to reservations to article 21, in view of Islamic views on adoption.

28. Mrs. BELEMBAOGO said that she quite understood the concern felt by Mrs. Santos Pais about the reservations entered, for some of them left a very broad margin of manoeuvre in implementing the Convention. Mr. Kolosov and Miss Mason had convinced her that the Committee should approach the problem with great prudence. She wondered whether it would be premature at the present juncture for the Committee to adopt a firm attitude. Other committees already had lengthy experience of the matter whereas the Committee on the Rights of the Child had not yet considered a single country report and did not know the reasons why reservations had been made. It should therefore wait a little longer before adopting any particular position. Nevertheless, a dialogue should be initiated with government representatives during the consideration of country reports, but without going into the substance of the question of the compatibility or incompatibility of reservations with the Convention, which was a matter for the States parties to decide.

29. Mr. HAMMARBERG stressed the importance of the issue. Of the various human rights instruments, the Convention on the Rights of the Child was second in the number of ratifications it had received and first in the promptness with which it had come into force. Yet there were many reservations to it. Some were so sweeping that they seemed to undermine the purpose of the Convention and others were very vague. The point was whether the Committee had the right to ask States parties for information about their reservations, especially when it was considering their reports. Legal advice should be sought in that regard and the Rapporteur should be requested to continue her work. The Committee might either assume the role of a State party and question whether the reservation was legitimate under article 51, paragraph 2, of the Convention or, in the case of a lack of clarity, ask the State party concerned about the substance of the reservation. When the question of religion arose, it might affect several articles of the Convention and the Committee would need to know which particular articles were excluded under the reservation. It would be impossible to discuss a country report without having precise information on that point. Although it was not the Committee's function to act as a watchdog in the matter of reservations, it could ask reporting States parties whether a particular reservation was in fact necessary.

30. The CHAIRMAN said she agreed that the question as to whether the consideration of reservations formed part of the relations between the Committee and reporting States parties was important.

31. Mr. KOLOSOV noted that the Convention allowed reservations and objections to them. States parties, when accepting the Convention, had known in advance that they could make reservations. If the Committee were to press them too hard on their reservations and express disagreement with them, new ratifications might not be forthcoming. If the Committee stated that a particular reservation was incompatible with the purpose of the Convention, the State party concerned might even denounce the Convention. A cautious approach was therefore essential.

32. Mrs. SANTOS PAIS (Rapporteur) said she concurred with Mr. Kolosov. While it was perfectly clear from article 51 of the Convention that reservations could be entered, was there a limit to them? The article stipulated that only those reservations which were not incompatible with the object and purpose of the Convention were permitted. So there was a border, and the difficulty was how to establish where it lay.

33. Again, there was a difference between the kind of reservation entailing a particular approach to a specific provision - as, for instance, in the case of article 21, which required interpretation - and reservations stating, for example, that a State party did not consider that ratification of the Convention implied the acceptance of obligations that went beyond constitutional limits. One of the basic principles of articles 2 and 4 was that States parties should adopt legislative measures to ensure compatibility between their domestic legislation and the Convention. In cases of that kind, article 27 of the Convention on the Law of Treaties would presumably apply.

34. As to reservations that were to be considered invalid because they were incompatible with the object and purpose of the Convention, was there a need for the State concerned to react, or was the inherent invalidity of the reservation enough? Moreover, one of the practical problems often met with by States parties was that the communication of a particular reservation came to their knowledge too late for them to object. The Chairman could perhaps give some indication of the problems the Committee might face and make recommendations at the forthcoming meeting of chairpersons of treaty monitoring bodies.

35. Mrs. EUFEMIO said that many articles of the Convention were interlinked. She wondered whether the Committee, when considering a country report, could, without putting the State party on the defensive, point out that a particular reservation was vague. An opportunity would thus be afforded to gain greater insight into the meaning of the article in question.

36. Mr. HAMMARBERG endorsed Mrs. Eufemio's comment. The Convention required a holistic approach, as was emphasized in the Committee's guidelines. For instance, it was very difficult to enter a reservation in respect of article 37 without also undermining a great deal more of the Convention. The Committee could not possibly have a really serious discussion with a State party without asking questions about the meaning of its reservations.

37. Mr. GOMES DA COSTA said there seemed to be two basic attitudes among States parties to the Convention. Some tended to adapt their legislation to it, while others adapted the Convention to their own law. Some reservations tended to increase the protection of the child, while others restricted children's rights. That point must be borne in mind in the consideration of States parties' reports.

38. Mr. HAMMARBERG proposed that, in addition to raising the question of reservations at the next meeting of chairpersons of treaty bodies, the Committee should place it on its agenda for a future session and the Rapporteur should meanwhile work on the matter.

39. It was so decided.

Discussion on the Committee's forthcoming press conference

40. The CHAIRMAN invited members to suggest which issues should be discussed at the Committee's press conference.

41. Mgr. BAMBAREN GASTELUMENDI said that the subjects which had been discussed at the previous day's meetings deserved a public response from the Committee both in terms of providing encouragement and in drawing attention to the serious plight of children throughout the world. It was unfortunate, in his view, that the media were giving greater prominence to the war in Yugoslavia than to the situation of children in Somalia. He therefore proposed that Mr. Hammarberg be requested to prepare a draft press release reflecting the work of the Committee at its present session and referring more particularly to the issues discussed at the two previous meetings to ensure that the message the Committee wished to convey would be highlighted rather than one selected by the press itself.

42. Mr. HAMMARBERG said that, while he would be prepared to draft a press release, he would need some guidance about the content. The Committee had engaged in a substantial discussion on the question of children in armed conflicts and on the question of urgent appeals, for example, but was not yet ready to draw conclusions on those subjects.

43. Miss MASON said that there was no need for the Committee to form any conclusions on matters discussed. Rather, it should spotlight the issues and indicate that the Committee took them very seriously.

44. Mr. KOLOSOV suggested that reference should first be made to the fact that the Committee had been established for the purpose of considering States parties' reports, which it would start to tackle at the next session, in January 1993. The reporting States should be mentioned and reference should also be made to the regional meetings held in Quito and Beijing in collaboration with UNICEF. As the last press conference had taken place a year earlier, there should be some indication of the Committee's activities in the meanwhile. In particular, the question of children in armed conflicts should be raised, but without naming the countries involved. Instead, the numbers of countries might be mentioned, and the fact that the Committee had obtained its information from non-governmental organizations.

45. Mrs. SANTOS PAIS said that the press would want something more challenging than the questions of internal interest discussed at the present session. The discussions held the previous day would provide more appropriate material. Emphasis should be placed on the numbers of children involved, the fact that their interests were paramount, and on the extensive international cooperation which had been established.

46. Mr. MOMBESHORA said he agreed with Mr. Kolosov that countries should not be named, except, perhaps, for some reference to the gravity of the situation in Somalia. The Committee should look for ways of expressing its concern without apportioning blame.

47. Mrs. EUFEMIO suggested that mention might also be made of the relevance of the work of other human rights treaty bodies to the work of the Committee.

48. The CHAIRMAN said she took it that the Committee wished Mr. Hammarberg to prepare a statement for the press highlighting four issues in particular: the question of children in armed conflict, making reference to certain areas of concern but not mentioning the countries by name; the relationship between the work of the Committee and that of other treaty bodies; the States parties which had already reported, and the two regional meetings.

49. It was so decided.

50. After a brief procedural discussion in which Mrs. MASON, Mr. KOLOSOV, Mr. HAMMARBERG, Mrs. EUFEMIO, Mgr. BAMBAREN GASTELUMENDI, Mrs. BELEMBAOGO and Mrs. SANTOS PAIS took part, the CHAIRMAN suggested that the Chairman, the Rapporteur and Mr. Hammarberg should be the three main spokesmen, the Chairman herself reading out the press release, and that questions might also be answered by other members of the Committee where appropriate.

51. It was so decided.

The meeting rose at 6 p.m.